

83 - 195

No.

Office - Supreme Court, U.S.
FILED

AUG 24 1983

ALEXANDER L. STEVAS,
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

DELTA FARMS RECLAMATION DISTRICT No. 2028,
Petitioner,

vs.

SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

BETTY WOLFE
MEMERING, DEMERS, HONER,
VARANINI, HURST & CROWLE
P. O. Box 590
Sacramento, CA 95803
Telephone (916) 444-9420
Counsel for Petitioner

August 1983

QUESTION PRESENTED

Whether a California Reclamation District, which consists of private landowners who may be ultimately liable to persons who are injured on property included in the District as a result of negligence of the District, is entitled to the same immunities from tort liability under California Civil Code section 846 as a private individual, when said real property is used for recreational purposes as defined in California Civil Code section 846.

TABLE OF CONTENTS

	<u>Page</u>
Question presented	i
Opinions below	1
Grounds for jurisdiction	2
Statutory provisions involved	2
Statement of the case	2
Reasons for granting the petition	7
1. California Civil Code Section 846 as interpreted by the California Supreme Court denies peti- tioner's right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution	7
2. Reclamation districts have standing to raise an equal protection argument	8
3. The decision of the California Supreme Court regarding the lack of immunity for reclamation districts has far-reaching implications	14
4. Denial of "recreational use" immunities to reclamation districts will affect the general public as a whole	17
Conclusion	18
Appendix A	A-1
Appendix B	A-11
Appendix C	A-30
Appendix D	A-32

TABLE OF AUTHORITIES CITED

Cases

	<u>Page</u>
El Paso County Water Improvement District No. 1 v. City of El Paso, 133 F.Supp. 894	9
McCord v. Ohio Div. of Parks & Rec., 54 Ohio St.2d 72..	15
McGee v. International Life Ins. Co., 355 U.S. 220	16
Metro. Dade County v. Yelvington 392 So.2d 911	15
Moore v. City of Torrance, 101 Cal.App.3d 66	6
Nelson v. City of Gridley, 113 Cal.App.3d 87	5, 6
People v. S. Williams, 56 Cal. 647	9, 10
Scheck v. Houdaille Constr. Materials, Inc., 279 A.2d 17	14
Syrowick v. Detroit, 119 Mich. App. 343	15
Thompson v. United States, 592 F.2d 1104	8
Trimblett v. New Jersey, 383 A.2d 1146	15
Wight v. State, 403 N.Y.S. 2d 450	15
Williams v. Mayor and City Council of Baltimore, 289 U.S. 36	10

Constitutions

United States Constitution, Fourteenth Amendment	2, 7, 8, 10
Texas Constitution, Article 16, Section 59	16

TABLE OF AUTHORITIES CITED

Statutes

	<u>Page</u>
Cal. Civ. Code:	
§ 814	5
§ 815(b)	5
§ 846	<i>passim</i>
Cal. Gov. Code:	
§ 945	9, 13
§ 970.4	9, 10
§ 970.8(a)	13
Cal. Water Code:	
§ 50000	10, 11
§ 50141	13
§ 50145	13
§ 50300	11
§ 50300(a)	11
§ 50370	11
§ 50370.2	11
§ 50600	11
§ 50601	11
§ 50704	12
§ 50800	12
§ 50900	13
§ 51003	12
§ 51201	14
§ 51231	9, 12, 14
§ 51323	12
§ 51326	13
§ 51600	9
Del. Code Ann. title 7, § 5901	14
Iowa Code Ann. § 111C.1-111C.7	15

TABLE OF AUTHORITIES CITED

STATUTES

	<u>Page</u>
Mass. Gen. Laws Ann.:	
Ch. 252, § 1	15
Ch. 252, § 12	16
N.C. Gen. Stat.:	
§ 156-56	16
§ 156-70	16
§ 156-103	16
Okla. Stat. Ann. Title 82 § 503	16
Tex. Red. Civ. Stat. Ann. Article (a), 6252-19, § 3	16
Wis. Stat. Ann. § 29.68(5)(d)	15
28 U.S.C. § 1257(3)	2

Miscellaneous

Note, Torts-Statutes-Liability of Landowner to Persons Entering for Recreational Purposes, 1964 Wis. L.Rev. 705	15
Bulletin No. 37, Financial and General Data Pertaining to Irrigation, Reclamation and Other Public Districts in California, Cal. State Printing Office (1930)	18

No.
In the Supreme Court

OF THE
United States

OCTOBER TERM, 1983

DELTA FARMS RECLAMATION DISTRICT NO. 2028,
Petitioner,

VS.

SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN,
*Respondent.**

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

The petitioner Delta Farms Reclamation District No. 2028, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of California entered in the above entitled case on April 4, 1983.

OPINIONS BELOW

The opinion of the Third District Court of Appeal for the State of California and the opinion of the California Supreme Court regarding this issue appear in Appendices A and B, respectively, attached hereto.

*The other parties to this case are real parties in interest, plaintiffs, Mable Fernandez, Mary Alice Caston and Karen Denise Edwards.

GROUND'S FOR JURISDICTION

The judgment of the California Supreme Court was entered on April 4, 1983. A timely petition for rehearing was filed with the California Supreme Court and such petition was denied on May 26, 1983, and this petition for certiorari was filed within ninety days of that date. This court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

STATUTORY PROVISIONS INVOLVED

This case involves the provisions of California Civil Code section 846, the full text of which appears in Appendix C attached hereto.

This case also involves Section 1 of the 14th Amendment to the Constitution of the United States. Said section reads as follows:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On or about June 23, 1979, two minors, Pacquita Hill and Cheryl Fernandez, drowned while wading in a waterway alleged to have been maintained and controlled by Delta Farms Reclamation District No. 2028, (hereinafter referred to as "Petitioner"). Following the deaths of said minors a

civil action was initiated on or about November 30, 1979, in the Superior Court of the State of California in and for the County of San Joaquin, entitled "Mabel Fernandez, Mary Alice Caston and Karen Denise Edwards, Plaintiffs, vs. Delta Farms Reclamation District No. 2028, et al., Defendants, Action No. 148335."

Plaintiffs Mabel Fernandez and Karen Denise Edwards are the mother and sister, respectively, of the decedent Cheryl Fernandez. Plaintiff Mary Alice Caston is the mother of decedent Pacquita Hill. The underlying civil action claimed damages for the wrongful deaths of the decedents and for emotional distress allegedly suffered by the plaintiffs as a result of the drownings.

On or about May 19, 1979, a First Amended Complaint was filed by said plaintiffs, alleging that the drownings of the two minors were proximately caused by Petitioner's breach of duty to warn foreseeable recreational users of its waterways of dangerous conditions which existed as a result of dredging of the waterways. The Amended Complaint further alleged that the drownings of the minors were observed by plaintiffs, causing said plaintiffs to become ill and further causing plaintiff Karen Denise Edwards to suffer a miscarriage of her unborn fetus.

Petitioner filed a demurrer to the First Amended Complaint on or about June 12, 1980, stating, among other grounds, that the complaint filed by plaintiffs did not state a cause of action because, pursuant to California Civil Code section 846, property owners are immune from liability for failure to warn recreational users of dangerous conditions on their property, there being no distinction to the status of the property owner. i.e. public or private.

Plaintiffs' response to Petitioner's demurrer contended, among other grounds, that wading was not a recreational use protected by California Civil Code section 846 and thus Petitioner was not immune under said section. At the hearing of the demurrer on the First Amended Complaint, held on July 7, 1980, the trial court overruled the demurrer.

For other reasons, a Second Amended Complaint was filed by plaintiffs and Petitioner again filed a demurrer to this Second Amended Complaint on the same grounds as stated above. A hearing was held on this demurrer to Plaintiffs' Second Amended Complaint, on October 2, 1980. The trial court again overruled Petitioner's demurrer in part, specifically ruling that wading was not a recreational activity. In the meantime, before another trial court judge, co-Defendant and property owner Riverview Investment Company, Inc. demurred on the basis of Code of Civil Procedure section 846. The court found that wading was recreational, thereby applying the immunity of Code of Civil Procedure section 846, and sustained their demurrer.

Following the ruling of the trial court that Petitioner's demurrer had no merit, Petitioner sought a writ of mandamus from the Appellate Court for the Third District of the State of California, to compel the trial court to sustain Petitioner's demurrer. At this stage of the proceedings, Petitioner was arguing that the type of activity that the decedents were engaged in at the time of their deaths (i.e., wading) was included in the definition of "recreational purpose" under California Civil Code section 846. Petitioner further argued that because of its interest in the real property where the accident allegedly occurred, Petitioner was immune from liability under California Civil Code section 846.

In its petition for writ of mandamus, Petitioner argued that even though it was a public entity, Petitioner was entitled to any immunity provided by statute and to any defense that would be available if it were a "private person".

Because the trial court had based its overruling of the Petitioner's demurrer on the grounds that "wading" was not included in the definition of "recreational purpose" under California Civil Code section 846, Petitioner did not stress the issue of whether it should be entitled to the same immunity as any private person.

In the opinion of the Third District Court of Appeal of the State of California (attached Appendix A) filed on November 13, 1981, the Appellate Court spoke very briefly to the issue of the application of California Civil Code section 846 to allow Petitioner immunity for the alleged accident. Section III page 9 of the attached opinion states succinctly that Petitioner has no immunity because California Civil Code section 846 ". . . does not apply to public entities," citing to the case of *Nelsen v. City of Gridley*, 113 Cal.App.3d 87, 169 Cal.Rptr. 757 (1980).

Following the ruling of the Third District Court of Appeal of California denying the petition for writ of mandamus, Petitioner brought a petition for rehearing in that same appellate court. Petitioner's argument on its petition for rehearing was that under California Government Code sections 815(b),¹ the immunities of California Civil Code

¹California Government Code section 815(b) states, in pertinent part: "Except as otherwise provided by statute: . . . (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person." (Emphasis added.)

section 846 should be applied to public entities in the same manner as they are applied to private persons. The Third District Court of Appeal rejected Petitioner's argument and on December 9, 1981, denied the petition for rehearing without modification of its previous opinion.

In order to exhaust all state court avenues of review of this issue, Petitioner brought a petition for hearing with the California Supreme Court. Petitioner's argument at this stage of the proceedings was that there was a conflict between California Appellate Court decisions regarding the issue of immunity for public entities under California Civil Code section 846. The apparent conflict existed between the decisions rendered in *Moore v. City of Torrance*, 101 Cal.App.3d 66, 166 Cal. Rptr. 192 (1979), which held that the immunity provisions of California Civil Code section 846 were applicable to public entities, and the decision rendered in the case of *Nelsen v. City of Gridley*, *supra*, cited by the California Third District Court of Appeal in its earlier opinion denying Petitioner's writ of mandate.

The California Supreme Court rejected Petitioner's arguments and on April 4, 1983, entered its opinion denying Petitioner's petition for writ of mandate. The California Supreme Court's ruling was based on the reasoning that the legislative intent behind California Civil Code section 846 did not make the Code section applicable to public entities. On its face, California Civil Code section 846 does not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. However, in ruling that the legislative intent behind California Civil Code section 846 was to exclude public entities of a similar nature as reclamation districts from the immunities provided by said statute, the California Supreme Court

has now denied Petitioner its right to equal protection under the Fourteenth Amendment to the United States Constitution.

Following the entry of the California Supreme Court opinion on April 4, 1983, Petitioner sought a petition for rehearing to the California Supreme Court, specifically arguing that the court's interpretation of California Civil Code section 846 was a denial of equal protection and that to deny Petitioner the same immunities of said section, as were allowed to private persons, would discriminate against state and federal public entities.

By its order of May 26, 1983, denying Petitioner's petition for rehearing, the California Supreme Court obviously rejected Petitioner's equal protection argument. Petitioner has now exhausted all state court remedies and having timely raised the issue of whether the California Supreme Court's interpretation of California Civil Code section 846 is repugnant to the equal protection clause of the Fourteenth Amendment to the United States Constitution, this matter is ripe for review by the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

1. **California Civil Code Section 846 as Interpreted by the California Supreme Court Denies Petitioner's Right to Equal Protection of the Laws, as Guaranteed by the Fourteenth Amendment to the United States Constitution**

This case presents important questions concerning the rights of "public entities", who are also landowners, to assert the same rights as private landowners to claim

immunity from tort liability under a state statute allowing tort immunity for injuries to persons involved in recreational activities.

California Civil Code section 846 provides tort immunity for landowners when the injured party was involved in certain "recreational activities" at the time of the injury. The purpose of such a statute is to encourage landowners to allow members of the general public to use their land for recreational purposes, by limiting liability for injuries sustained in the course of such activities. *Thompson v. United States*, 592 F.2d 1104, 1108 (9th Cir. 1979).

The California Supreme Court has ruled that Petitioner is a "public entity" and as such should not be allowed to assert the landowner's immunity of California Civil Code section 846. In so ruling, private landowners within the reclamation district are denied the same protection from tort liability that they would enjoy had their land not been reclaimed under the authority of the California Water Code.

2. Reclamation Districts Have Standing to Raise an Equal Protection Argument

Petitioner asserts that reclamation districts in California are not "political subdivisions" of the State such as to preclude them from asserting their right to equal protection under the Fourteenth Amendment to the United States Constitution. For purposes of raising an equal protection argument, the term "persons" has not been equated with "human beings", as can be seen from the fact that corporations have the right to assert equal protection

rights. *El Paso County Water Improvement Dist. No. 1 v. City of El Paso*, 133 F.Supp. 894, 906 (W.D. Tex. 1955). Under California case authority, reclamation districts are deemed public corporations. *People v. S. Williams*, 56 Cal. 647 (1880).

Reclamation districts are distinguishable from political subdivisions of the state in that unlike the state, municipalities or agencies of either, any damages assessed against reclamation districts will not be paid out of the general coffers by the taxpayers as a whole, but will be assessed against the individual landowners comprising the district. Under California law, public entities may sue and be sued. Cal. Government Code § 945 (West 1980). Once a party obtains a judgment, the judgment is then paid out of any funds to the credit of the local public entity that are "(a) unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes. . . ." Cal. Government Code § 970.4 (West 1980).

As previously noted, the individual landowners of reclamation districts are ultimately liable for damages assessed against the reclamation district wherein their land is located. Cal. Water Code § 51231 (West 1966). These individuals are specifically known and the properties to which the damage is assessed are delineated as to their proportionate share of the assessed damages. Cal. Water Code § 51231 (West 1966). Further, if the landowners do not pay the assessed amounts, their land can be sold and the proceeds used to pay such assessments. Cal. Water Code §§ 51600, *et seq.* (West 1966). This is quite different from the situation involving states, municipalities or other political sub-

divisions, wherein damages assessed against such entities are paid out of the general coffers and are borne by the taxpayers as a whole. Cal. Government Code § 970.4 (West 1980). Because the individual landowners in the reclamation district are held ultimately liable for the damages assessed, they should have the right to assert, as individual landowners, the right to equal protection under the Fourteenth Amendment to the United States Constitution.

The makeup of the reclamation districts involved in this action is further support for Petitioner's right to raise an equal protection argument. Although the California Supreme Court has deemed the districts to be "public entities", a closer examination reveals that they are, in fact, and even defined by earlier California case authority, public corporations. *People v. Williams, supra*, at 647 (1880).

Petitioner is well aware that "[p]olitical subdivisions of a state may not challenge the validity of a state's statute under the Fourteenth Amendment." *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40 (1933). However, Petitioner submits that reclamation districts, as defined by California Water Code section 50,000, *et seq.*, and interpreted by case law, are not "political subdivisions" such as would preclude the districts from raising an equal protection argument.

In deciding the importance of this issue, it would be of great benefit to understand how the reclamation districts are formed, operated, what powers they have, and who must ultimately bear the brunt of any tort recovery against the district. On closer examination it is evident

that reclamation districts are more akin to "private persons" than they are to "political subdivisions" of the state.

California Water Code sections 50,000, *et seq.* (West 1966), sets forth the applicable laws governing the formation, operation, powers and duties of the reclamation districts. Such districts are established to reclaim and improve certain types of land through the joint efforts of the *individual landowners*. To form a reclamation district, one-half of the landowners in the prescribed area may petition the Board of Supervisors of the county where the whole or greater portion of the land of the district is situated to have the area designated as a reclamation district. Cal. Water Code § 50300 (West 1966). The types of land that qualify for inclusion in reclamation districts are swamps and overflowed lands, salt-marshes and tidelands, or other lands subject to flood or overflow. Cal. Water Code § 50300(a) (West 1966).

By the very nature of the formation of these districts, it is possible for one-half of the landowners in the district to be involuntarily included in such districts. Once a petition has been approved by the Board of Supervisors, then the owners of a majority of the acreage in the district may adopt by-laws, similar to those that are required of any corporation, which govern and control, to a certain extent, the affairs of the district. Cal. Water Code § 50370 (West 1983). If the owners fail to adopt by-laws, then the Board of Trustees created pursuant to California Water Code sections 50600 and 50601 have the authority to adopt by-laws to govern the district. Cal. Water Code § 50370.2 (West 1983).

The reclamation districts are operated very similarly to a private corporation in that they can elect officers and also can hold special elections to decide whether bonds or refunding bonds shall be issued. Cal. Water Code § 50800 (West 1966). At such elections the *individual* landowners have one vote for each dollar value of real estate owned by said landowner in the district according to the last equalized tax roll of each county in which the lands of the district are situated. Cal. Water Code § 50704 (West 1983).

The general operation of the district involves the Board of Trustees reporting to the Board of Supervisors on the original plan of reclamation and any new, supplemental or additional plans regarding the land in the district. Cal. Water Code § 51003 (West 1966). When a reclamation plan is adopted, the Board of Supervisors then appoints three assessment commissioners to view and assess upon the district land the sum estimated to be the cost of the reclamation plan, and to *apportion such costs according to the benefit that will accrue to each parcel* by reason of expenditures of the sums of money to complete the plan. Cal. Water Code § 51231 (West 1966). Once the work is finished under the proposed reclamation plan, the Assessment Commissioner shall assess the valuation per acre for each parcel in the district in proportion to the benefits to be derived from the continuation and operation of the district reclamation work. Cal. Water Code § 51323 (West 1966).

The assessed values are used as a basis for levying assessments against the parcels described in the operation and maintenance assessment rolls for the purposes of raising funds for the maintenance, repair and operation of

the district work, the payment of incidental expenses thereof, and for future supplementation to the district. Cal. Water Code § 51326 (West 1966).

The California Code specifically grants the districts the power to do all things necessary or convenient for accomplishing the purposes for which the district was formed. Cal. Water Code § 50900 (West 1966). Also, an action may be brought by a Trustee, or a *landowner* if the Board of Trustees has not been elected, against a person or entity for damage done to the reclamation district. Cal. Water Code § 50141 (West 1966). Conversely, under California Water Code section 50145 (West 1966), a provision is made whereby all claims for money or damages *against* the district are governed by Part III and Part IV of Division 3.6 of Title I of the Governmental Code of the State of California, dealing with presentation of claims against a "public entity". Under California Government Code section 945 (West 1980), found in Part IV of Division 3.6 of Title I, "[a] public entity may sue and be sued." However, when a claim or an amount of recovery is found due to a party from the reclamation district, the amount due is assessed pursuant to California Government Code section 970.8(a) (West 1980).² The prior law relating to assessment for damages against a reclamation district has been repealed. Therefore, the assessment would assumably be made according to the amount of benefit per acre each parcel received as a result of the reclamation done in the

²Government Code section 970.8(a): "Each local public entity shall in each fiscal year include in its budget a provision to provide funds in an amount sufficient to pay all judgments in accordance with this article."

district pursuant to California Water Code section 51231 (West 1966), dealing with the levying of assessments.

It can readily be seen by the structure of the reclamation district that the individual landowners are ultimately responsible for funding the reclamation district, as well as being liable for any damages incurred against the district as a result of tortious conduct.

3. The Decision of the California Supreme Court Regarding the Lack of Immunity for Reclamation Districts Has Far-Reaching Implications

At the present time at least forty-three states have enacted "recreational statutes" which substantially limit the duties of landowners toward persons who enter the land for recreational purposes.³ The general purpose of these statutes is the same as that of California Civil Code section 846: "[T]o encourage *owners* of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes." Del. Code Ann. tit. 7 § 5901 (1974); emphasis added. Other objectives behind recreational use statutes are based on the need to avoid the imposition of burdensome and unfair duties upon owners of large tracts of land to visitors who enter for recreational purposes where such owners do not receive any substantial benefit from the visitors' presence on their land.⁴ Finally, such statutes are enacted to encourage

³A complete list of the states which have enacted "recreational statutes" is included in Appendix D attached hereto.

⁴See *Scheck v. Houdaille Constr. Materials, Inc.*, 121 N.J.Super. 335, 279 A.2d 17 (1972).

landowners to permit hunters to thin large herds of animals who inhibit forest reproduction.⁵

There exists a distinct split among the states as to whether or not property of the state, municipalities or "governmental subdivisions" of the state should be included in the protection from tort liability by such recreational use statutes. Some states specifically exclude such "public entities" from the immunity coverage of such statutes,⁶ while others have, by statute or judicial interpretation, allowed landowning "public entities" to take advantage of such tort immunities.⁷

There are a number of states with recreational use statutes which have not decided the issue of whether "public entities" are included under the tort immunities of such statutes. It should be noted that a number of those states have also enacted statutes very similar to California's reclamation district statute. As an example, in Massachusetts, reclamation districts are formed in a similar fashion and for a similar purpose as are reclamation districts in California. Mass. Gen. Laws Ann. ch. 252, §§ 1, *et seq.* (West 1983). The Massachusetts statutes specifically allow for tort liability against the districts, and any damages so recovered are considered a part of

⁵Note, *Torts-Statutes-Liability of Landowner to Persons Entering For Recreational Purposes*, 1964, Wis. L. Rev. 705, 709.

⁶Iowa Code Ann. §§ 111C.1-111C.7 (West 1983); and *Metro. Dade County v. Yelvington*, 392 So.2d 911, 912 (Fla. Dist. Ct. App. 1980).

⁷Wis. Stat. Ann. § 29.85(5)(b) (West 1982); *McCord v. Ohio Div. of Parks and Rec.*, 54 Ohio St. 2d 375 N.E.2d 50, 52 (1978); *Trimblett v. New Jersey*, 383 A.2d 1146, 1148 (N.J. Super.Ct. App. Div. 1977); *Syrowik v. Detroit*, 119 Mich. App. 343, 326 N.W.2d 507, 509 (1982); and *Wight v. State*, 403 N.Y.S.2d 450, 452 (1978).

the total expenses of the district and are assessed accordingly. Mass. Gen. Laws Ann. ch. 252, § 12 (West 1959).

Other states have similar statutes to those of California and Massachusetts regarding the formation of reclamation districts.⁸ In *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), this court granted certiorari to hear an issue regarding the constitutionality of California service of process statutes. The basis for the granting of certiorari in that case was stated as follows: "Since the case raised important questions, not only to California but to other states which have similar laws, we granted certiorari." *Id.*, at 221. The reasoning used in *McGee* is easily applicable to this petition because of the number of other similar statutes.

The recreational use statutes, similar to that of California, are a fairly recent development in tort law, almost all having been enacted by states within the past twenty years. See Appendix D, attached hereto. Those having been most recently enacted generally lack a judicial interpretation of whether or not such immunities apply to "public entities". Because of California's history of being in the forefront of creative judicial interpretation, the decisions in this action will obviously be referred to and relied upon for future authority. A decision in the subject matter case that is repugnant to the Fourteenth Amendment of the United States Constitution would not only have adverse effects upon California's quasi-public landowners, but would also have severe precedential effect on other states

⁸See, N.C. Gen. Stat. §§ 156-56, 156-70 and 156-103 (1983); Texas Const. art. 16, § 59; Tex. Rev. Civil Stat. Ann. art. 6259-19, § 3 (Vernon 1970); and Okla. Stat. Ann. tit. 82, § 503 (West 1970).

with similar statutes involving both recreational use tort immunity and public entity reclamation districts.

By reaching its decision in this action, the California Supreme Court has established a far-reaching precedent involving public law. By this petition, Petitioner is not only seeking a correction of its fundamental right to be treated equally under the law as any other "person", but it is also seeking to correct a miscarriage of justice that will affect others. Petitioner submits that if the California Supreme Court ruling in this case is allowed to stand, other private citizens who may be deemed to comprise a "public entity" will face liability for torts which should fall within the immunities of recreational use statutes.

4. Denial of "Recreational Use" Immunities to Reclamation Districts Will Affect the General Public as a Whole

The discussion above illustrates that a decision regarding the issue involved here will affect not only the parties involved in this action but will also affect other states with similar statutes. It should also be noted that to deny reclamation districts the immunities under such recreational use statutes will, in effect, substantially decrease the amount of land that will be available to private citizens for recreational purposes. If landowners who are involved in such reclamation districts can be ultimately liable to recreational users, they will seek to prohibit the use of land for such purposes. Although no recent figures were discovered showing the actual amount of land used for reclamation districts in California, due to the nature of the types of land subject to reclamation, the amount is quite

substantial. As an example, the reclamation district involved in this case, Reclamation District No. 2028, formed in 1918, contained approximately 5,625 acres when the last publication was made regarding such districts.⁹ Because there are numerous reclamation districts throughout California and other states, the impact of the California Supreme Court ruling is far-reaching. It should be noted that in California alone a high percentage of the total acreage of the state can be subject to reclamation and a substantial amount of such land has already been reclaimed. The effect of this denial of tort immunity would be even greater in those states which are smaller in size and thus have a greater need for more land to be open to recreational users. To deny reclamation districts the same tort immunities for recreational use as "private landowners will result in a severe decrease in the amount of land available to the general public for outdoor activities.

CONCLUSION

Reclamation districts are made up of lands owned by individual landowners. Although by its decision in this case, the California Supreme Court has deemed such districts to be "public entities" for purposes of the tort immunity provision of California Civil Code section 846, this does not preclude such districts from asserting an equal protection argument under the Fourteenth Amendment to the United States Constitution.

Reclamation districts are comprised of individual landowners, are similar to private corporations in their oper-

⁹Bulletin No. 37, *Financial and General Data Pertaining to Irrigation, Reclamation and Other Public Districts in California*, Cal. State Printing Office (1930).

ations, have been deemed by California judicial interpretation to be public corporations, and, most importantly, the individual landowners will ultimately bear the cost of any judgment rendered against the district. Weighing all of these factors, such districts should be treated the same as private landowners under the provisions of California Civil Code section 846, and to do otherwise would violate the district's rights to equal protection under the law.

Wherefore, Petitioner respectfully requests this court to grant its petition for writ of certiorari.

Respectfully submitted,

BETTY WOLFE
MEMERING, DEMERS, HONER,
VARANINI, HURST & CROWLE
Counsel for Petitioner

August 1983

Appendix A

CERTIFIED FOR PUBLICATION

**In the Court of Appeal of the State of California
in and for the Third Appellate District**

(San Joaquin)

3 Civ. 20302

(Super. Ct. No. 148335)

**Delta Farms Reclamation District No. 2028,
Petitioner,**

v.

**The Superior Court of the County of San Joaquin,
Respondent.**

**Mabel Fernandez et al.,
Real Parties in Interest.**

[Filed Nov. 13, 1981]

**ORIGINAL PROCEEDING; application for a writ of
mandate. Writ denied.**

**Memering & DeMers and Henry W. Crowle, for Peti-
tioner.**

No appearance for Respondent.

**Lewis, Lewis & Less, and Lawrence J. Less and Craig R.
Blackstone, for Real Parties in Interest.**

. . .

**Petitioner, Delta Farms Reclamation District No. 2028
(Delta Farms), seeks a writ of mandate directing respond-
ent superior court to sustain its general demurrer to real
parties' complaint for damages for injuries, including emo-
tional distress, for the wrongful death of two teenage girls
who drowned in a canal owned by the district. We issued**

an order to show cause. The district contends that the complaint (1) fails to state a claim under Government Code section 835, liability for dangerous conditions of public property; (2) fails to state facts avoiding the public entity immunity for reservoirs, drains, conduits and canals provided by Government Code section 831.8; (3) fails to state facts avoiding land-owner immunity against persons on property used for recreational purposes provided by Civil Code section 846; and (4) states claims for negligent infliction of emotional distress, which are barred by Government Code section 815. We deny Delta Farms the relief it seeks.

FACTS

"A demurrer admits all material and issuable facts properly pleaded. [Citations.]" (Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 713; California State Police Assn. v. State of California (1981) 120 Cal.App.3d 674, 680.) We set out the facts accordingly.

— About June 23 or 24, 1979, Paquita Hill and Cheryl Fernandez, both 15 years of age, drowned on district property in a waterway known as Middle River. The waterway is said to be in a dangerous condition, as a result of dredging by Delta Farms and others, in that it is only a foot deep five feet from the shore, at which point it plunges to a depth of 60 feet. The children, while wading, stepped off the hidden drop and drowned in view of real parties. The district knew or should have known of the dangerous condition. It also knew that visitors frequent the area of the drownings, had posted a sign limiting the hours of parking nearby and knew or should have known

that visitors are likely to wade or swim there. Nevertheless, it failed to warn real parties of the latent dangers of the river. Real parties, Mary Alice Caston (Hill's mother), Mabel Fernandez (Fernandez' mother) and Karen Denise Edwards (Fernandez' sister), witnessed the drownings and suffered emotional distress and, in addition, Edwards, who was pregnant at the time, suffered a miscarriage.¹

I

Delta Farms asserts that real parties allege only common law claims of negligence and that negligence plays no part in the application of section 835² to this case. It implies that section 835 employs negligence standards only for a dangerous condition created by the negligence of a district employee (§ 835, subd. (a)) and that no liability attaches

¹Government Code section 815 provides: "Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. [¶] (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person."

²Government Code section 835 provides: "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: [¶] (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

for a negligent failure to warn of a dangerous condition which was not so created. Delta Farms misreads the statute.

Although the Tort Claims Act imposes liability only as "provided by statute" (§ 815), the statute incorporates common law concepts of liability. "The Tort Claims Act must necessarily be read against the background of general tort law. The conceptual theory of statutory liability under the act is keyed to the common law of negligence and damages" (Van Alstyne, *Cal. Government Tort Liability Practice* (Cont.Ed.Bar 1980) § 2.7, pp. 36-37.) Specifically, negligence concepts inform the statutory basis of liability for failure to warn of a dangerous condition of property. (§§ 835, subd. (a); 830.) Real parties predicate their action on the second ground. (See *Flournoy v. State of California* (1969) 275 Cal.App.2d 806, 814; and see *Cameron v. State of California* (1972) 7 Cal.3d 318, 327-328; § 830.)

Section 835 establishes alternate grounds of liability, put generally, where the entity either (a) wrongfully or negligently created the dangerous condition, or (b) had notice of a dangerous condition on its property and failed to take measures to protect against it. "A public entity may be held liable for a 'dangerous condition' of public property only if it has acted reasonably in creating *or* failing to remedy or warn against the condition" (Emphasis added.) (Cal. Law Revision Com. com. to § 830, 32 West's Ann. Gov. Code (1980 ed.) p. 264.) "Regardless of the availability of [an] active negligence theory [creating a danger], plaintiffs [are] entitled to go before a jury on [a] passive negligence theory, i.e., an accident

caused by the [entity's] failure to warn the public against [the] danger known to it but not apparent to a reasonably careful . . . user." (Cameron v. State of California, *supra*, 7 Cal.3d at p. 328, quoting from Flournoy v. State of California, *supra*, 275 Cal.App.2d at p. 811.)

Real parties claim that whether or not Delta Farms *wrongfully* dredged out the trap into which the children fell, it was nonetheless a dangerous condition to users of the river and the district failed to warn them of the trap. (See Van Alstyne, *supra* §§ 3.18-3.24, pp. 210-222.) Here, the dredging of the waterway was apparently done for a purpose unconnected with swimming or wading. But public entities are liable "for maintaining property in a condition that creates a hazard to foreseeable users even if those persons use the property for a purpose for which it was not designed to be used or for a purpose that is illegal." (Cal. Law Revision Com. com. to § 830, 32 West's Ann. Gov. Code, *supra*, at pp. 264-265.) "Public property which is not damaged or in a deteriorated condition, and which is neither structurally unsound nor physically defective may, nevertheless, be in a dangerous condition because the design or location of the improvement, the interrelationship of its structural or natural features, or latent hazards associated with its normal use, create a substantial risk of injury to foreseeable careful users." (Van Alstyne, *supra*, § 3.8, p. 188.)

Section 835, as applicable here, provides for entity liability where (a) the property was in a dangerous condition at the time of injury; (b) the injury was proximately

caused by such condition; (c) such condition created a reasonably foreseeable risk of injury of the kind of injury which was incurred; and (d) the entity had notice as provided in section 835.2 of such condition in time to take remedial measures. (See *Warden v. City of Los Angeles* (1975) 13 Cal.3d 297.) The complaint will survive a demurrer if it is factually detailed enough to support an inference that each of these statutory requirements is satisfied. It does.

The complaint sufficiently alleges the existence of a dangerous condition and that the injuries were the proximate result of the condition. The allegations of the likelihood of wading and swimming by visitors and the description of the sudden, latent, drop of the waterway's dredged bottom set forth a trap which poses a reasonably foreseeable risk of drowning to waders. (See *Davis v. Cordova Recreation & Park Dist.* (1972) 24 Cal.App.3d 789 ["a sump hole built into the bottom of a 'fish pond' in a public park"]; "a sump hole in a pond does not endanger those who fish from the shore but might be dangerous to waders." (Van Alstyne, *supra*, § 3.8, p. 188.)

Section 835.2 requires that the entity must have "actual notice of a . . . condition and knew or should have known of its dangerous character." (§ 835, subd. (a).) "Actual notice must embrace both the fact that the condition exists and that it is dangerous." (Van Alstyne, *supra*, § 3.21, p. 212.) "Imputed notice . . . satisfies the actual notice requirement . . ." (*Ibid.*)

The complaint alleges that "Delta Farms knew or should have known of the dangerous condition of the waterway known as Middle River." "In the pleading of notice, a

general allegation of actual notice is ordinarily sufficient." (Van Alstyne, *supra*, § 3.72, p. 294, and cases cited therein.) Liberally read (*Marin v. Jacuzzi* (1964) 224 Cal.App.2d 549, 552), the complaint says that the district knew of the condition and that it was dangerous, which can also be inferred from the allegations that Delta Farms participated in the dredging which created the trap for waders and that it knew that persons waded in the water near the trap. Constructive notice, also provided for by section 835.2, is invoked by the allegation that the condition was permanent, or at least semi-permanent which could not possibly have escaped the district's notice for long. (Gov. Code, § 835.2.)³

³Government Code section 835.2 provides: "(a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character. [¶] (b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to: [¶] (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property [¶] (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition."

II

Delta Farms seeks refuge in Government Code section 831.8, subdivision (b), which confers immunity on "irrigation district[s]" and the state and their employees for injuries suffered by persons using canals, conduits and drains in a manner not intended. It expressly applies only to "irrigation district[s]." (See Water Code, § 20500 et seq.)

Delta Farms is a reclamation district which is separately classified and governed. (Water Code, § 50000 et seq.) Delta Farms seeks to bring reclamation districts within the immunity for irrigation districts on the ground that reclamation districts, like irrigation districts, may acquire and maintain irrigation systems in connection with their lands. (Water Code, § 50910.) We disagree. "When the Legislature intended to limit the liability of public entities for dangerous property conditions, it did so by express language applicable to narrowly defined situations." (Van Alstyne, *supra*, § 3.19, p. 211; compare § 3.46, p. 263.) The immunity in section 831, subdivision (b), unlike that in section 831, subdivision (a) (for "public entities" generally), is made expressly applicable only to the state and to irrigation districts and their employees. Reclamation districts are not included.

III

The district's claim of landowner immunity under Civil Code section 846 fails because that statute does not apply to public entities. (*Nelsen v. City of Gridley* (1980) 113 Cal.App.3d 87.)

IV

Finally, the district contends that recovery for negligent infliction of emotional distress upon the relatives of the deceased who witnessed the drownings is not provided by statute and is thereby barred. (§ 815.)

Section 835 imposes entity liability for a "dangerous condition [which] created a reasonably foreseeable risk of the *kind of injury* which was incurred" Negligence concepts are imported by the standards of foreseeability and due care contained in sections 835 and 830. "Injury" is defined in section 810.8. (*E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 511.) It provides: "'Injury' means death, injury to a person, damage to or loss of property, or any other *injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person.*" (Emphasis added.) The definition is applicable both to section 835 and to the allied definition of dangerous condition in section 830. "The definition of 'dangerous condition' is quite broad because it incorporates the broad definition of 'injury' contained in Section 810.8. Thus, the danger involved need not be a danger of physical injury; it may be a danger of injury to intangible interests so long as [it] is of a kind that the law would redress if it were inflicted by a private person." (Cal. Law Revision Com. com. to § 830, 32 West's Ann. Gov. Code, *supra*, at p. 265.)

Under these provisions, an injury to "feelings" is compensable if it "is of a kind that the law would redress if it were inflicted by a private person." This imports a common

law meaning into the statute, a meaning which includes the injury of emotional distress.

Molien v. Kaiser Foundation Hospitals (1980) 27 Cal.3d 916 establishes the rule for private persons: emotional distress is a compensable "injury" if "the risk of [such] harm to [plaintiff] was reasonably foreseeable" to defendants. (*Id.*, at p. 923.) This test of liability meshes with section 835's requirement "that the dangerous condition [must have] created a reasonably foreseeable risk of the kind of injury which was incurred" "[T]he phrase 'kind of injury' . . . serves to define the public entity's duty by relating it to the manner in which injuries would foreseeably follow from its breach." (Van Alstyne, *supra*, § 3.26, pp. 224-225.)

Real parties have alleged such a foreseeable risk. As in *Molien*, the risk of emotional distress to real parties was reasonably foreseeable to Delta Farms. It is predictable that parents would accompany their children while wading in the river and that they would suffer emotional distress from witnessing their deaths by drowning. Section 835 encompasses the alleged injuries.

DISPOSITION

The petition for a writ of mandate is denied and the order to show cause is discharged. (CERTIFIED FOR PUBLICATION.)

PLEASE, J.

We concur:

PUGLIA, P. J.

REYNOSO, J.

Appendix B

S.F. 24385

In the Supreme Court
of the State of California

Delta Farms Reclamation District No. 2028,
Petitioner,

v.

The Superior Court of San Joaquin County,
Respondent;

Mabel Fernandez, et al.,
Real Parties in Interest.

[Filed April 14, 1983]

Petitioner Delta Farms Reclamation District No. 2028 (Delta) seeks mandate directing respondent superior court to sustain Delta's general demurrer to real parties' second amended complaint seeking damages for the wrongful death of two 15-year-old girls who drowned in a canal owned by the district and for personal injuries, including emotional distress.¹ Delta contends that (1) it is immune from liability for injuries resulting from the use of its canal under the provisions of Government Code section 831.8, (2) by virtue of Civil Code section 846, it was under no duty to protect against injuries or death from the recreational use of its property; (3) the cause of action for negligent infliction of emotional distress is barred by Government Code section 815, and (4) the complaint fails to state a cause of action for liability for the dangerous

¹The inadequacy of the district's remedy by appeal was necessarily determined by the Court of Appeal when it issued an order to show cause. (People v. Superior Court (Douglass) (1979) 24 Cal.3d 428, 431; Ingram v. Superior Court (1979) 98 Cal.App.3d 483, 489-490.)

(SEE DISSENTING OPINION)

condition of public property under Government Code section 835.

"A demurrer admits all material and issuable facts properly pleaded." (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713.) We seek out the facts accordingly.

On June 23 or 24, 1979, Paquita Hill and Cheryl Fernandez, both 15 years of age, drowned on district property in a waterway known as Middle River. The waterway was in a dangerous condition in that it was only a foot deep for five feet from the shore, at which point, however, it plunged to a depth of 60 feet. The girls stepped off the hidden drop while wading and drowned. The district knew or should have known of the dangerous condition. It also knew that visitors frequented the area of the drownings—it had posted a sign limiting the hours of parking nearby—and knew or should have known that visitors were likely to wade or swim there. Nevertheless, it failed to warn real parties of the latent dangers of the canal. Real parties, Mary Alice Caston (Hill's mother), Mabel Fernandez (Fernandez' mother) and Karen Denise Edwards (Fernandez' sister), witnessed the drownings and suffered emotional distress, in addition. Edwards, who was pregnant at the time, suffered a miscarriage.

I

The district contends it is immune from liability under the provisions of subdivision (b) of Government Code section 831.8. Subdivision (a) of that section provides for immunity under specified circumstances for any public entity for injuries caused by the condition of a reservoir; nothing is said about canals. Subdivision (b), by contrast,

does confer immunity for injury suffered by persons using canals, conduits, or drains; the beneficiaries of the immunity are, however, only irrigation districts, the state and their employees.² It is not contended that Middle River is a reservoir.

²Government Code section 831.8 provides: "(a) Subject to subdivisions (c) and (d), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used. [¶] (b) Subject to subdivisions (c) and (d), neither an irrigation district nor an employee thereof nor the State nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or State intended it to be used. [¶] (c) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if: [¶] (1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property; [¶] (2) The condition created a substantial and unreasonable risk of death or serious bodily harm when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used; [¶] (3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care; and [¶] (4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition. [¶] (d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if: [¶] (1) The person injured was less than 12 years of age; [¶] (2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner

Petitioner is a reclamation district governed by the provisions of Water Code sections 50000 et seq.

Irrigation districts are separately classified and are governed by the provisions of Water Code section 20500 et seq. Petitioner claims that since it is authorized to acquire and maintain irrigation systems (Wat. Code, § 50910), it may invoke the immunity provisions of Government Code section 831.8, subdivision (b), regarding irrigation district canals. We do not agree. Since irrigation districts and reclamation districts have long been separately classified and regulated, we believe that the Legislature would have mentioned reclamation districts if it had intended the immunity provisions of subdivision (b) to apply to them.

If, as is contended, it had been the Legislature's intention to provide what Professor Van Alstyne calls "canal immunity" (Van Alstyne, Cal. Government Tort Liability Practice (Cont.Ed.Bar 1980) § 3.46, p. 263) to public entities other than the state or irrigation districts, it could easily have said so. One simple way of expressing such an intent would have been to insert the words "or canals, conduits and drains used for the distribution of water" after the word "reservoir" in subdivision (a) of section 831.8. The fact that the Legislature devoted a special subdivision to canal immunity and singled out the state and irrigation districts as the protected entities, proves conclusively that the words—"neither an irrigation district . . . nor the

in which it was reasonably foreseeable that it would be used; [f] (3) The person injured, because of his immaturity, did not discover the condition or did not appreciate its dangerous character; and [f] (4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition."

State . . .”—of subdivision (b) must not be interpreted to mean “any public entity which owns or operates a canal.”

II

The district also claims the protection of Civil Code section 846 (section 846) which limits the duty of care owed by “an owner of any estate or any other interest in real property” to persons using the property for designated recreational purposes.³

³Section 846 now provides: “An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section. [¶] A ‘recreational purpose,’ as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites. [¶] An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section. [¶] This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same

Section 846 itself, which only speaks of "owners," offers little guidance on the question whether the Legislature meant to include public entities in that term.⁴ On the other hand the legislative history of section 846, when considered in conjunction with other matters then before the Legislature, leaves no doubt that public entity liability was then very much on the mind of the Legislature and that, had it intended to bring such entities under the umbrella of section 846, it would have said so.

purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner. [¶] Nothing in this section creates a duty of care or ground of liability for injury to person or property."

"The dissent argues that the "owners" to whom section 846 applies include the state and other public entities such as the petitioning district. It relies, *inter alia*, on section 669 of the Civil Code which since 1872 has read in relevant part: "All property has an owner, whether that owner is the State, and the property public, or the owner an individual, and the property private." The section—which, incidentally, applies to personal as well as real property—merely recognized that in law there is no such thing as unowned property. As such it complements section 182 of the Government Code: "All property within the limits of the State, which does not belong to any person, belongs to the people. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the people."

It is, of course, impossible to quarrel with the proposition that the state can be an owner of property, but that is only the beginning of the problem in statutory interpretation which this case poses. Obviously the power of the state to own property cannot automatically lead to the conclusion that every statutory reference to an "owner" encompasses not only the state itself, but also—as relevant to this case—every public entity within the state. If that were the law, there would be no need for the rule that "[w]here a statute is not expressly made applicable to government, it is for the courts to determine whether the Legislature intended it to apply to government." (*People v. Centr-O-Mart* (1950) 34 Cal.2d 702, 704.)

The legislative history of section 846 (Stats. 1963, ch. 1759, § 1) shows that it was considered by the same committees of the Assembly and the Senate which, concurrently, readied the California Tort Claims Act (the Act) (Stats. 1963, ch. 1681) for consideration by the full Legislature.⁵ Although section 846 became law two days after

⁵(Stats. 1963, ch. 1681, § 1, p. 3267 (the Act).)

"Jan. 10—Read first time. To printer. From printer. *To committee. [Judiciary.]*

Feb. 26—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Mar. 12—From committee with author's amendments. Read second time. Amended. Re-referred to committee.

Mar. 18—From committee: Amend and re-refer to committee.

Mar. 19—Read second time. Amended. To print, and re-referred to committee.

April 2—From committee: Do pass as amended, but first amend, and re-refer to Com. on Fin.

April 3—Read second time. Amended. To print, and re-referred to Com. on Fin.

April 18—From committee: Do pass as amended.

April 22—Read second time. Amended. To print, engrossment, and third reading.

April 23—Reported correctly engrossed. Passed on file.

April 24—Passed on file.

April 25—Read third time. passed, title approved. *To Assembly.*

April 26—In Assembly. Read first time. Held at desk.

April 30—Referred *to Com. on Jud.*

May 16—From committee: Do pass as amended.

May 17—Read second time. Amended. To printer. From printer. Ordered returned to second reading file.

May 20—Read second time. Re-referred to Com. on W. & M.

June 14—From committee: Do pass as amended.

June 15—Read second time. Amended. To printer. From printer. Ordered returned to second reading file.

the Act, on occasion it led the latter on their joint journey through the two houses—for example, the Senate finished its work on section 846 on June 14, while it did not concur in Assembly amendments to the Act until five days later. We mention these legislative minutiae for a reason: the

June 17—Read second time. To third reading.

June 18—Read third time, passed, title approved. To Senate.

June 18—In Senate. To unfinished business.

June 19—Senate concurs in Assembly amendment. To enrollment.

July 1—Reported correctly enrolled. To Governor at 4:30 p.m.

July 15—Approved by Governor. Chapter 1681.”

(*Stats. 1963, ch. 1759, § 1, p. 3511* (section 846).)

“Feb. 7—Read first time. To printer. From printer. *To committee. [Judiciary.]*

May 6—From committee. Do pass.

May 7—Read second time, to engrossment and third reading.

May 8—Reported correctly engrossed. Read third time, passed, title approved. *To Assembly.*

May 9—In Assembly. Read first time. Held at desk.

May 10—*Referred to Com. on Jud.*

May 23—From committee. Do pass as amended. To Consent Calendar.

May 24—Read second time. Amended. To printer. From printer. Ordered returned to second reading file.

May 27—Read second time. To Consent Calendar.

May 29—Read third time, passed, title approved. To Senate.

May 29—In Senate. To unfinished business.

June 3—Senate refuses to concur in Assembly amendments. In conference.

June 14—Senate adopts conference report.

June 21—Assembly adopts conference report. To enrollment.

July 3—Reported correctly enrolled. To Governor at 11 a.m.

July 17—Approved by Governor. Chapter 1759.”

(Data taken from Cal. Leg., Final Calendar of Legislative Business (1963 Reg. Sess.), emphasis added.)

simultaneous passage of the two pieces of legislation through the same two committees and, later, both houses of the Legislature, makes it particularly appropriate that the two statutes—which, to some extent, deal with the same problem—be construed in such a way that they produce harmony rather than dissonance. (*Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584, 590-591.) To be specific: both statutes deal with liability to recreational users of property—section 846 does so exclusively, the Act in part. The rule of construction just adverted to commands us to avoid any interpretation of section 846 which is at odds with the provisions of the Act as far as injuries to recreational users of public property are concerned.

Actually an unbiased reading of section 846 and the relevant sections of the Act—principally sections 831.2, 831.4, 831.8 and 835 of the Government Code⁶—gives little reason to suppose that section 846 was ever intended to upset the carefully structured, comprehensive, statutory framework of the Act by including public entities among the landowners whom it protects: First, section 846 preserves the then prevailing distinction between trespassers, licensees and invitees—concepts which are foreign to the Act (*Gibson v. County of Mendocino* (1940) 16 Cal.2d 80, 84-85; see also *O'Keefe v. South End Rowing Club* (1966) 64 Cal.2d 729, 749, fn. 12; *Acosta v. County of Los Angeles* (1961) 56 Cal.2d 208, 212-213; *Gallipo v. City of Long Beach* (1958) 164 Cal.App.2d 70, 76; *Van Alstyne, Cal. Government Tort Liability* (Cont.Ed.Bar 1964) § 6.22,

⁶Except for section 846, which is in the Civil Code, all statutory references are, unless otherwise noted, to the Government Code.

p. 205). Second, as we shall presently show, application of section 846 to public entities would eviscerate large portions of the Act. Third, application of section 846 to public entities would lead to some patently absurd results. One example will suffice at this point: since section 846 is by no means limited to land in its natural condition—it specifically mentions “structures”—it obviously encompasses improved streets. So, of course, does the Act. (§ 830 et seq.) Therefore, an improved but dangerously rutted street would expose a city to liability to a bicyclist who commutes to work, even though it was under “no duty” to keep the same street safe for the recreational rider right behind him.⁷ We doubt that there is a single city attorney in this state who would submit such an absurdity to a court of law.

Thus, although it should have been clear from the outset that the Act and section 846 dealt with different sets of potential defendants—the former with public entities and officers, the latter with private landowners—the Courts of Appeal temporarily backed themselves into a holding that section 846 did benefit public as well as private landowners. The error is easily traceable to *English v. Martin Mun. Water Dist.* (1977) 66 Cal.App.3d 725 where the court—without stopping to consider that one of the two defendants was a public entity—applied section 846 against a plaintiff who, during a recreational ride, drove his motorcycle over a hidden precipice. The only legal issue discussed was the impact of *Rowland v. Christian* (1968) 69 Cal.2d 108 on section 846. Next, *Gerkin v. Santa Clara*

⁷In what category would one put the commuter who, solely for exercise, pedals home by a circuitous route?

Valley Water Dist. (1979) 95 Cal.App.3d 1022 assumed by dictum that section 846 applied to the defendant public entity, but nevertheless reversed a summary judgment against the plaintiff, holding that she may not have used the particular property for recreational purposes—"walking" is not necessarily "hiking." Then came *Moore v. City of Torrance* (1979) 101 Cal.App.3d 66 which said that *English* "clearly refuted" the argument that section 846 did not apply publicly owned property—overlooking that the *English* court never adverted to the possibility of a distinction between private and public property.⁸

In sum, the precedential authority for applying section 846 to public entities rests solidly on a case which never considered the point—*English*. Actually, the first case which thoroughly canvassed the issue—*Nelsen v. City of Gridley* (1980) 113 Cal.App.3d 87—came to precisely the opposite conclusion: section 846 did not apply to public entities because it was irreconcilable with the provisions of the California Tort Claims Act. A brief analysis of section 846 and the relevant Government Code provisions proves that *Nelsen* is irrefutably correct and that the *English-Gerkin-Moore* line of cases must be disapproved.

The purpose of section 846 is to encourage property owners "to allow the general public to recreate free of charge on *privately* owned property." (*Parish v. Lloyd* (1978) 82 Cal.App.3d 785, 787; emphasis added; see also *Lostritto v. Southern Pac. Transportation Co.* (1977) 73

⁸There is also a dictum in *Blakley v. State of California* (1980) 108 Cal.App.3d 971 to the effect that even if the defendant state had owned the top of a cliff—which it did not—it would not be liable to a plaintiff who had engaged in the recreational activity of fighting before he was pushed over the edge.

Cal.App.3d 737, 747.) This purpose is achieved by a basic declaration that owners owe "no duty of care to keep the premises safe" for certain specific recreational purposes. Broadly speaking the only exceptions relate to (a) victims of wilful or malicious conduct by the owner, (b) persons who have paid consideration for permission to enter, and (c) express invitees. We note again that the statute makes no distinction between natural and artificial conditions.

The Act evinces a similar purpose to encourage public entities to open their properties for recreational use by providing for certain immunities. It goes about it, however, in radically different fashion.

The basic rule of liability for dangerous and defective public property, stated in section 835, is preceded by several immunities, some of which relate exclusively—or nearly so—to recreational activities. Thus section 831.2 declares that a public entity is not liable "for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach." The Legislative Committee Comment states in part: "It is desirable to permit the members of the public to use public property in its natural condition and to provide *trails for hikers and riders and roads for campers* But the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use." (Emphasis added.) Obviously this comment would make little sense if the public entity were already protected from claims by hikers, riders and campers by virtue of section 846.

That the Legislature did not believe that public entities were under no duty to recreational users is even more obvious if we examine section 831.4 which provides an immunity for injuries caused by unpaved roads and trails which furnish access to "fishing, hunting, camping, hiking, riding . . . water sports, recreational or scenic areas . . .".⁹ The comment indicates that the purpose of the immunity is the same as that provided by section 831.2—opening up public property for recreational use by making it financially safe to do so.

The important aspect of section 831.4 is, however, that it provides a very limited immunity against the claims of the fishermen, hunters, campers, hikers and riders: if the road which leads to the recreational area is paved or happens to be a city street—though unpaved—the immunity does not

⁹Section 831.4 reads as follows: "A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of: [f] (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state- or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways. [f] (b) Any trail used for the above purposes. [f] (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads."

apply and liability to hunters, campers, et al. is clearly recognized. This result simply cannot be reconciled with section 846.

Even more compelling is an analysis of section 831.8 (see fn. 2, *ante*). Subdivision (a) of that section immunizes entities from liability for the dangerous condition of reservoirs which are not used for the purpose which the agency intended or permitted. Clearly this immunity applies principally to water sports. (E.g., *Cardenas v. Turlock Irrigation Dist.* (1968) 267 Cal.App.2d 352; *Hibbs v. Los Angeles County Flood Control Dist.* (1967) 252 Cal.App.2d 166.) It is, however, subject to several exceptions stated in subdivisions (c) and (d). Subdivision (c), in essence, negates the immunity if the injured person is not guilty of criminal trespass and is victimized by a "trap" known to the entity. Subdivision (d) creates an exception in the nature of the attractive nuisance doctrine, provided the victim is less than 12 years old.

Subdivisions (c) and (d) thus amount to an express imposition of public entity liability for activities which, in their nature, are almost exclusively recreational. It is simply inconceivable that the Legislature could intend such liability to coexist with a statute, such as section 846, which negates it.

Petitioner also relies on section 815 which provides in relevant part that "except as otherwise provided by statute" liabilities of entities established by the Act are "subject to any immunity . . . provided by statute . . . and . . . subject to any defense that would be available to the public entity if it were a private person." Petitioner claims, of course, that section 846 is such an immunity or defense.

We disagree with petitioner's conclusion, for the Act does "otherwise provide." Sections 831.2, 831.4 and 831.8 are clear and express recognition that the fact that the injured party is using public property for a recreational purpose is immaterial and that where liability attaches in favor of a nonrecreational user, it will also attach in favor of the hunter, hiker, swimmer, camper and so on. These three sections, therefore, negative the applicability of section 846 to public entities.

In view of the conclusion we have just reached, we need not consider real parties' further argument that section 846 does not provide for an immunity or defense as demanded by section 815, but—more directly—negatives any duty.

Finally, we are urged to construe section 846 in accord with *Moore v. City of Torrance*, *supra*, because, after that decision, section 846 was amended in 1980 and the Legislature failed to avail itself of the opportunity to disavow *Moore*. (*Alter v. Michael* (1966) 64 Cal.2d 480, 482-483.)

Whatever force the rule relied on by petitioner may have generally as an aid to statutory construction was neutralized in this instance by the wealth of cases which had, as a matter of course, dealt with recreational injuries and deaths in the context of the Act.¹⁰ While most of these

¹⁰All of the following decisions were decided before the last amendment to section 846 in 1980: *Cardenas v. Turlock Irrigation Dist.* (1968) 267 Cal.App.2d 352 (swimming); *Rendak v. State of California* (1971) 18 Cal.App.3d 286 (hiking); *Buchanan v. City of Newport Beach* (1975) 50 Cal.App.3d 221 (surfing); *Osgood v. County of Shasta* (1975) 50 Cal.App.3d 586 (water skiing); *Fuller v. State of California* (1975) 51 Cal.App.3d 926 (diving); *County of Sacramento v. Superior Court (Kuhn)* (1979) 89 Cal. App.3d 215 (floating).

cases ended unfavorably to the respective plaintiffs, at least one—*Buchanan v. City of Newport Beach*, *supra*—held that the defendant city could be held liable for injuries to a surfer. If legislative reaction to appellate decisions is really as sensitive as petitioner suggests, at least one of the four amendments to section 846 which followed *Buchanan* (Stats. 1976, ch. 1303, § 1; Stats. 1978, ch. 86, § 1; Stats. 1979, ch. 150, § 1; Stats. 1980, ch. 408, § 1) should have made explicit what is contended to be implicit: that public entities are protected by section 846. We hold that they are not.

III

The district further contends that recovery for negligent infliction of emotional distress suffered by relatives who witnessed the drownings is not provided by statute and is therefore barred by section 815.¹¹ We disagree.

Section 835 imposes liability for a “dangerous condition [which] created a reasonably foreseeable risk of the kind of injury which was incurred” The term “injury” is defined in section 810.8 as meaning “death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person.” A “dangerous condition” is defined in section 830 as meaning a “condition of property that creates a substantial . . . risk of injury when such property . . . is used with due care in a

¹¹Section 815 provides in pertinent part: “Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.”

manner in which it is reasonably foreseeable that it will be used." The Law Revision Comment to section 830 makes it clear that the injury resulting from a dangerous condition may be an emotional one: "The definition of 'dangerous condition' is quite broad because it incorporates the broad definition of 'injury' contained in Section 810.5. Thus the danger involved need not be a danger of physical injury; it may be a danger of injury to intangible interests so long as the injury is of a kind that the law would redress if it were inflicted by a private person." (32 West's Ann. Gov. Code (1980 ed.) p. 265.)

Under these provisions, an injury to "feelings" is compensable if it "is of the kind that the law would redress if it were inflicted by a private person." This imports a common law meaning into the statute which would include emotional distress.

Emotional distress is a compensable injury when inflicted by a private person if the risk of such harm to plaintiff was reasonably foreseeable to defendant. (*Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 923; *Dillon v. Legg* (1968) 68 Cal.2d 728, 739.) This test of liability dovetails with the requirement of section 835 that the "dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred."

Real parties have alleged such a foreseeable risk. It is predictable that adult relatives would accompany children who are wading in the canal and that they would suffer emotional distress from watching them drown. Section 835 encompasses that type of injury.

IV

The district's final contention is that the complaint fails to state a cause of action for liability under section 835 for the dangerous condition of public property. That section establishes alternate grounds of liability for injuries caused by a dangerous condition where the public entity either (a) wrongfully or negligently created the dangerous condition, or (2) had actual or constructive notice of a dangerous condition on its property and failed to take measures to protect against it. (See fn. 5, *ante*.) Real parties rely on the second ground of liability.

The district claims the complaint does not state a cause of action on this ground because the allegations of notice are inadequate. Section 835.2 sets forth what must be established for a public entity to be charged with notice of a dangerous condition: (a) actual notice is established if the public entity "had actual knowledge of the existence of the condition and knew or should have known of its dangerous character," (b) constructive notice is shown "if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character."

The complaint alleges that the district "knew or should have known of the dangerous condition of the waterway known as Middle River." The district argues the allegation is inadequate because it does not set forth any underlying facts regarding knowledge. The point is well taken as to constructive notice, which clearly requires a more detailed statement of facts than that alleged here. As to actual

knowledge, however, a general allegation is sufficient. (See *Matthews v. State* (1978) 82 Cal.App.3d 116; *Osborne v. City of Whittier* (1951) 103 Cal.App.2d 609; *Allen v. City of Los Angeles* (1941) 43 Cal.App.2d 65; *Van Alstyne, Cal. Government Tort Liability Practice* (Cont.Ed.Bar 1980) § 3.72, p. 294.) The pleading of actual notice is sufficient to withstand the district's general demurrer. (See *Hitson v. Dwyer* (1943) 62 Cal.App.2d 803.)

The petition for writ of mandate is denied and the order to show cause is discharged.

KAUS, J.

WE CONCUR:

BIRD, C.J.

MOSK, J.

BROUSSARD, J.

LALLY, J.*

*Assigned by the Chairperson of the Judicial Council.

Appendix C**§ 846. Permission to enter for recreational purposes**

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleanng, winter sports, and viewing or enjoying historical archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity;

or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Appendix D

- Ala. Code, tit. 47, §§ 281-285 (Supp. 1969)
- Ark. Stat. Ann. §§ 50-1101 to 50-1107 (Repl. Vol. 1971)
- Cal. Civ Code § 846 (West Supp. 1971)
- Colo. Rev. Stat. tit. 33, §§ 41-101 to 41-105 (Supp. 1976)
- Conn. Gen. Stat., Ann. §§ 52-557f to 52-557j (Cum. Pamphl. 1973)
- Del. Code Ann. tit. 7, § 5901-07 (Cum. Pamphl. 1970)
- Fla. Stat. Ann. § 375.251 (Cum. Pamphl. 1973)
- Ga. Code Ann. §§ 105-403 to 105-409 (1965) (Cum. Supp. 1973)
- Hawaii Rev. Stat. §§ 520-1 to 520-8 (Supp. 1971)
- Idaho Code § 36-1604 (Supp. 1978)
- Ill. Stat. Ann., ch. 70, §§ 31-37 (Smith-Hurd Supp. 1971)
- Ind. Ann. Stat. § 14-2-6-3 (Burns 1973)
- Iowa Code Ann. §§ 111C.1 to 111C.7 (Cum. Pamphl. 1973)
- Kan. Stat. Ann. §§ 58-3201 to 58-3207 (Cum. Pamphl. 1973)
- Ky. Rev. Stat. Ann. § 150.645 (1971)
- La. Rev. Stat. Ann. §§ 9-2791, 9-2795 (West) (Supp. 1978)
- Me. Rev. Stat. Ann. §§ 12-3001 to 12-3005 (1974)
- Md. Natural Resources Code Ann. §§ 5-1101 to 5-1108 (Supp. 1977)
- Mass. Ann. Laws ch. 21, § 17C (1973)
- Mich. Comp. Laws Ann. § 300.201 (Supp. 1961)
- Minn. Stat. Ann. §§ 87.021 to 87.026 (Cum. Pamphl. 1974)
- Mont. Rev. Code Ann. §§ 67-808 to 67-809 (2d Repl. Vol. 1967)
- Neb. Rev. Stat. §§ 37-1001 to 37-1008 (1968)
- Nev. Rev. Stat. § 41.510 (1971)

- N.H. Rev. Stat. Ann. § 212.34 (Repl. Vol. 1964)
- N.J. Stat. Ann. §§ 2A:42A-2 to 2A:42A-5 (Cum. Pamphl. 1973)
- N.M. Stat. Ann. § 53-4-5.1 (Repl. Vol. 8, Cum. Pamphl. 1973)
- N.Y. Gen. Oblig. Law 9-103 (McKinney Cum. Pamphl. 1972)
- N.C. Gen. Stat. §§ 113-120.5 to 113-120.7 (Supp. 1978)
- N.D. Cent. Code §§ 53-08-01 to 53-08-06 (Cum. Pamphl. 1973)
- Ohio Rev. Code Ann. §§ 1533.18 to 1533.181 (Page 1964)
- Okla. Stat. Ann. tit. 76, § 10-15 (Cum. Pamphl. 1973)
- Ore. Rev. Stat. §§ 105.655, 105.660, 105.670, 105.680 (1971)
- Pa. Stat. Ann. tit. 68, §§ 477-1 to 477-8 (Cum. Pamphl. 1973)
- S.D. Comp. Laws Ann. § 20-9-5 (Cum. Supp. 1973)
- Tenn. Code Ann. §§ 51-801 to 51-805 (1966)
- Tex. Rev. Civ. Stat. Ann. art. 1b (1969)
- Vt. Stat. Ann. tit. 10, § 5212 (Supp. 1975)
- Va. Code Ann. § 8-654.2 (Cum. Pamphl. 1973)
- Wash. Rev. Code §§ 4.24.200-4.24.210 (Supp. 1973)
- W.Va. Code Ann. §§ 19-25-1 to 19-25-6 (1971)
- Wis. Stat. § 29.68 (1973)
- Wyo. Stat. Ann. §§ 34-389.1 to 34-389.6 (Supp. 1973)